WILL.

1. *Will—Ambiguity — Devise of land not owned by the testator—Error in description—Extrinsic evidence—Guardianship—Express trust—Title by possession—Constructive trust—Statute of Limitations—R. S. O. ch. 108, s. 13, c. 132, c. 198, s. 30—Pleadings—New trial.*]—A testatrix devised the S. ½ of lot 20, con. 9, township of R., to T. L., and the E. ½ of said lot to her two daughters.

It was sought to show that she had at the time of her death no other land than the S. ½ of lot 20, con. 8, of R., and to make the will operate to pass this to T. L.

Held, that, the devise being in its terms free from ambiguity, the Judge below was right in rejecting evidence of extrinsic facts, and that even if it might have been shewn that lot 20, in con. 8, was the only land which the testatrix owned, the will could not operate to pass it.

Held, also, that J. L. having been appointed by the Surrogate Court, guardian of her son, T. L., she thereby became an express trustee during his minority, so that she could not acquire title against him by possession of his lands, yet that the guardianship ended and the trust ceased with T. L.'s minority, and as after that J. L. dealt with the land in question as her own for some 22 years, she had acquired a good title to it by possession as against T. L.

Held, also, that T. L., having in his pleadings set up that J. L. had been in possession for the said 22 years as his tenant, could not obtain a new trial on the ground that he could shew by evidence that she had been in as caretaker for him.

Semble, per PROUDFOOT, J., that if J. L. had, after the minority of T. L., continued to manage the property for his benefit, she would then have been a constructive trustee for him, not an express one. *Hickey et al.* v. *Stover et al.*, 106.

2. *Will—Debts—Whether general charge to pay—Trespass—Entry by devisee necessary to maintain.*]—A testator by his will directed his executors to pay all his debts, &c., out of his estate. Then followed specific devises of his estate to his wife, children, and nephews, and a direction to his executors to sell the chattels, excepting the household furniture bequeathed to his wife, and out of the proceeds to pay the debts and to invest the balance for the benefit of the wife and children. By a codicil he directed his executors, if necessary, to sell in the first place lot A, specifically devised as aforesaid, to pay off any debts or incumbrances against his estate; and in the event of such sale being insufficient to pay said debts, &c., then in the next place to sell and dispose of lot B, also so specifically devised. The executors before disposing of lots A and B, sold to defendant the growing timber on lot C, a lot specifically devised to the plaintiffs, the defendant purchasing in good faith and on his solicitor's advice that the executors had the right to sell to pay debts; and defendant entered and cut down and carried away the timber. Subsequently the defendant purchased the land from the mortgagees thereof the land having been mortgaged by testator. The plaintiffs, at the testator's decease, were under age, and did not become of age until after the trespass complained of, when they brought trespass against defendant claiming as damages the value of the timber so cut.